

EXHIBIT 103

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action No. 1:14-cv-14176
- - - - -x
STUDENTS FOR FAIR ADMISSIONS, INC.,
Plaintiff,
v.
PRESIDENT AND FELLOWS OF HARVARD COLLEGE
(HARVARD CORPORATION),
Defendant.

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DEPOSITION OF MICHAEL D. SMITH, Ph.D., a
witness called by and on behalf of the
Plaintiff, taken pursuant to the Federal Rules
of Civil Procedure, before Daria L. Romano, RPR,
CRR and Notary Public in and for the
Commonwealth of Massachusetts, at Wilmer Cutler
Pickering Hale and Dorr, LLP, 60 State Street,
Boston, Massachusetts, on Tuesday, April 11,
2017, commencing at 8:56 a.m.

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1 Q. What are your job responsibilities as
2 dean of the Faculty of Arts and Sciences?

3 A. I am the chief academic officer and
4 also responsible for the operations and finances
5 of the Faculty of Arts and Sciences.

6 Q. And as chief academic officer, what
7 responsibilities does that entail?

8 A. Quite a few different things. It
9 depends on how long you want my answer to be.

10 Q. Why don't we try a brief synopsis.

11 A. Okay. So the Harvard College Graduate
12 School of Arts and Sciences, the Paulson School
13 of Engineering and Applied Sciences, the
14 Division of Continuing Education, a number of
15 the museums at Harvard, a good portion of the
16 library system, athletics, plus the
17 administrative and financial and human resources
18 portions of the Faculty of Arts and Sciences all
19 report up to me.

20 Q. Does that include admissions?

21 A. It does include admissions.

22 Q. Does admissions have its own reporting
23 path up to you, or is it part of some other of
24 the groups you just mentioned?

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1 Q. When you say that, I guess my question
2 is, is it tabulated on a list of pros and cons,
3 or are there points assigned, or does it factor
4 into a subjective rating? Can you explain how
5 it's actually taken into account as one factor?

6 MS. ELLSWORTH: Objection.

7 A. I cannot.

8 Q. Have you ever asked anyone that
9 question?

10 A. I have not.

11 Q. Why not?

12 MS. ELLSWORTH: Objection.

13 A. I don't ask those questions about any
14 of the factors that we take into account.

15 Q. So beyond what you've already said,
16 are you otherwise able to testify at all about
17 any understanding you have as to how race
18 actually impacts or is used in the admissions
19 process?

20 MS. ELLSWORTH: Objection.

21 A. No.

22 Q. What is your understanding as to why
23 race is one of the factors that Harvard elects
24 to use?

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1 A. It's part of the lived experience that
2 our students bring to campus that enriches the
3 discussions that we have in our classrooms and
4 outside our classrooms.

5 Q. Okay. When you say "lived
6 experience," how does that relate to a person's
7 race?

8 MS. ELLSWORTH: Objection.

9 A. I believe people have had different
10 lived experiences because of their personal
11 characteristics, as well as their different
12 activities that they have undertaken through
13 life, and we value all of those different
14 experiences in the educational process that we
15 have.

16 Q. Do you think that's always true of
17 somebody's race?

18 MS. ELLSWORTH: Objection.

19 A. I wouldn't say always.

20 Q. You don't think a person's skin color
21 inevitably affects their experiences in life?

22 MS. ELLSWORTH: Objection.

23 A. In many cases, yes.

24 Q. But not in all cases?

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1 make assumptions before we gather and analyze
2 the data.

3 Q. Do you see any drawbacks to Harvard's
4 use of race in the admissions process?

5 MS. ELLSWORTH: Objection.

6 A. No.

7 Q. Sitting here today, can you think of
8 any circumstance in which Harvard would not want
9 to use race as a factor in the holistic
10 admissions process?

11 MS. ELLSWORTH: Objection.

12 A. I can't answer that question.

13 Q. Because you can't think of anything?

14 A. Right.

15 Q. What?

16 A. Right.

17 Q. Have you ever had discussions with
18 anybody at Harvard regarding what would be the
19 result if Harvard went to a race-neutral
20 admissions policy?

21 MS. ELLSWORTH: Objection.

22 I will remind the witness not to
23 answer -- not to disclose any communications
24 with counsel or advice of counsel. If you can

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1 answer the question otherwise, you may go ahead.

2 BY MR. STRAWBRIDGE:

3 Q. That's a yes-or-no question, have you
4 ever had discussions?

5 MS. ELLSWORTH: Same. If you can
6 answer it without disclosing advice of counsel,
7 you may.

8 A. I can't answer without disclosing
9 advice of counsel.

10 MR. STRAWBRIDGE: Please clarify
11 your instruction, counsel. The question is yes
12 or no, have you ever had discussions with
13 anybody.

14 MS. ELLSWORTH: Why don't you ask
15 the question again.

16 MR. STRAWBRIDGE: Let's repeat the
17 question again, please.

18 (Record read)

19 MS. ELLSWORTH: My instruction was
20 if you can answer the question without
21 disclosing advice of counsel, you may answer. I
22 don't know whether the witness can answer the
23 question or not. I've made my instruction.

24 THE WITNESS: Would you repeat the

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1 question again, please?

2 (Record read)

3 A. No.

4 Q. Have you ever personally thought about
5 what the results of a race-neutral admissions
6 policy would be at Harvard?

7 MS. ELLSWORTH: Objection.

8 A. No.

9 Q. Are you familiar with the University
10 of California Berkeley?

11 A. Yes.

12 Q. Do you have a view as to whether or
13 not there's sufficient racial diversity at the
14 University of California Berkeley?

15 A. I don't know enough of the details to
16 be able to answer that question.

17 Q. Have you ever had discussions with
18 anybody about -- strike that.

19 Are you aware that the University of
20 California system is barred from considering
21 race in the admissions decision-making process?

22 MS. ELLSWORTH: Objection.

23 A. Yes.

24 Q. Have you ever had discussions with

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1 anybody inside or outside of Harvard about the
2 effect of that policy?

3 A. Yes.

4 Q. What discussions have you had?

5 MS. ELLSWORTH: Objection.

6 I remind the witness not to disclose
7 advice of counsel and the contents of
8 communications with counsel. If you can answer
9 the question otherwise, you may.

10 A. I can't answer without --

11 Q. All of your discussions were with
12 counsel?

13 A. Yes.

14 Q. Have you had any discussions outside
15 the presence of counsel, with anybody, about the
16 effect of race-neutral policies, race-neutral
17 admissions policies at any university?

18 MS. ELLSWORTH: Objection.

19 A. No.

20 Q. My understanding is Harvard has areas
21 of concentration which are an alternative to
22 what some people refer to as their majors; is
23 that correct?

24 A. Yes.

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

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4 I, Daria L. Romano, RPR, CRR and Notary
5 Public in and for the Commonwealth of
6 Massachusetts, do hereby certify that there came
7 before me on the 11th day of April, 2017, at
8 8:56 a.m., the person hereinbefore named, who
9 was duly sworn by me, and that such deposition
10 is a true record of the testimony given by the
11 witness.

12 I further certify that I am neither related
13 to nor employed by any of the parties or counsel
14 to this action, nor am I financially interested
15 in the outcome of this action.

16 In witness whereof, I have hereunto set my
17 hand and seal this 17th day of April, 2017.

18
19
20 _____
21 Notary Public

22 My Commission Expires

23 February 20, 2020
24